

IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL
WRIT PETITION NO. 1374 OF 2001 (MS)
(OLD NO. 7023 OF 1999)

Smt. Kusumlata Srivastava, Retired,
Assistant Teacher, Prem Swaroop Srivastava,
R/O 2/3, Chandarpuri, Roorkee,
District- Sharanpur. Petitioner.

Versus

1. Prescribed Authority/Controlling Authority, Under The Payment Of Gratuity Act, 1972/Dy. Labour Commissioner, U.P. Ambala Road, Saharanpur.
2. Mahalakshmi Sugar Mills Co. Ltd. Iqbalpur, District Haridwar, Through Its Manager.
3. The Mahalaskshmi Sugar Mill, Uchchatar Madhyamik Vidyalaya, Iqbalpur, District Haridwar, Through Its Factory Manager. Respondent.

Dated: 16.05.2006

Hon'ble Rajesh Tandon, J.

Heard counsel for both the parties.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 15th January, 1999 passed by the Prescribed Authority under the payment of Gratuity Act, 1972. Further prayer has been made for a writ of mandamus commanding the respondent no. 2 to make the payment of gratuity due to the petitioner.

Briefly stated, according to the petitioner, he was appointed as Assistant Teacher in Mahalakshmi Sugar Mill, Uchchatar Madhyamik Vidyalaya, Iqbalpur, an institution run by the respondent no. 2 on 27th November, 1963.

However, he was superannuated on 30th June, 1998, but he was not paid the gratuity and as such he filed an application on 1st September, 1998 under Sub-Rule (1) of Rule 10 for payment of gratuity. Respondent no. 2 filed objection and stated that the provision of Payment of Gratuity Act, 1972 is not applicable in the case of the petitioner and the petitioner is not a workman. However, the claim of the petitioner was rejected vide order dated 15th January, 1999.

A counter affidavit has been filed, where the respondent has taken a stand that the petitioner is governed under the scheme known as "Vetan Adhiniyam w.e.f. 10th October, 1989. relevant paragraphs 5 and 6 of the counter affidavit are quoted below:-

"5. That under Government Order No, 3058/15-8-89/3054 dated 6-9-1989 the school known as 'The Mahalakshmi Sugar Mills Uchhtar Madhyamki Vidyalaya, Iqbalpur, District Haridwar' is covered under the Government Scheme Vetan Adhiniyam with effect from 10.10.1989. the petitioner has been taking her salary from the Zila Vidyalaya Nirikshak, Saharanpur as it intimated by the District Inspector of Schools by his letter dated 22.2.1990.

6. That thus the deponent states that if at all the petitioner has any claim for gratuity it is not from Respondent Nos. 2 and 3 but from the District Inspector of Schools, whom she has not impleaded as a necessary party in this writ petition and on this ground alone the writ petition deserves to be dismissed, that is for not impleading a necessary party."

As will appear from the aforesaid facts and circumstances that according to the respondents, the Payment of Gratuity Act will not apply as the petitioner is not a workman and as such the petitioner is governed by the provisions of the payment of salary and he has to approach the District Inspector of Schools for that purpose.

In view of the aforesaid, the petitioner is entitled to claim his salary from the appropriate department as suggested in the counter affidavit.

However, without entering into the merit of the controversy, it will be open for the petitioner to apply before the appropriate authority for retrial benefits including gratuity and the same shall be disposed of expeditiously.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

16.05.2006

Rathour